

November 6, 2003 Semi-annual HCP Review Meeting
10:00 a.m. to 3:00 p.m. USFWS New Franken

MINUTES

1. Three-year Review of Participation Plan Report - Service response

Janet and Cathy made remarks about the report. Overall they thought it did a good job at communicating the positive voluntary efforts being made for the conservation of the KBB. Dave shared an excellent outreach and educational product developed by ATC for their ROW landowners. He also shared a drawing done by an elementary school student for a forestry calendar contest. A large KBB was a featured species on the winning artwork.

To complete the report and provide the information noted in Permit Condition XII, Cathy requested the following items be added:

- Public information requests for 2001-2002 to appendix A. These were added for previous years, but not for 2001-2002.
- Include a statement addressing whether any known detrimental activities may be occurring in the voluntary group (that there are no adverse issues).
- Explain why not all HCP partners are not reporting ed/outreach activities. Report is missing several partner reports (Dave stated that partner audits showing that partners are doing outreach, but failing at times to document their efforts).
- Quantify (to the degree that can be done) positive outcomes of voluntary group conservation measures, e.g. how many conservation agreements has the DNR, USFWS (Mike Engel), and NRCS concluded for KBBs since September 1999, and how many acres of restoration does this amount to? Any landowner agreements concluded by other partners, e..g. with private woodland owners?

ACTION: DNR to make above revisions to the 3-year report; send 3 copies to Cathy, replace new version on DNR website, redistribute original notification.

Dave to send Cathy yellow information request postcard. FWS to send final response letter on 3-yr report once report finalized. Gary Birch to send Cathy "Keep It Simple" book produced by FHWA featuring endangered species (books going to state DOTs).

Cathy asked if report had been turned into a PowerPoint presentation. Dave said that the opportunity to use it had passed and Peter has had other priorities.

2. FWS Support of HCP

Support needed in a timelier manner. Update progress on "Issues Pending" list from 4-18-03.

- Several items on the list were checked off. Notably, several limited partner certificates of inclusion have been issued.

- ATC and Plum Creek CIs have still not been issued. Service requested additional information from both and has not received that information yet.
- Pesticide Guideline: Inclusion of Bromacil - progress report.
Cathy reports that she has not made progress, but thinks she has all the information she needs from Ursula Petersen. The ball is in Cathy's court.
- **WRPCO → WPSC transfer: Reaction to new SHCA?**
Some WRPCO lands not sold by SENA to WPSC were sold by SENA to private landowners; lands being pulled out of FERC boundary and selling to individuals per Bob Martini in discussion with Cathy. Is this a HCP issue? Jimmy: No, it's a FERC/ESA issue. Who owns these lands? Are any in SPA? Have KBB/habitat? Follow up with new landowners. Bob Hess said that at least some of this land is being developed.

ACTION: DNR will follow up on these questions. FWS will finalize WPSCO letter.

- **Crex request to use representative sites surveys for pre-management survey requirement -**

Progress report. Cathy doesn't think she has a request. But will look.

ACTION: Cathy and Dave will follow up on this request.

3. Streamlining HCP implementation - Update on progress on issues in "Streamlining Table".

3.1 FWS "fast track" approvals for minor amendments:

Update from action item below; Discussion/Decision.

Excerpt from 4/22/03 Meeting Minutes: Jimmy described the development of this idea from conversations with Lorin Hicks of Plum Creek, and summarized the proposed change. Janet said that the key to this would be agreement between the DNR and the Service as to what is meant by a "minor amendment". There was some discussion of how the proposed change would work: identifying categories of issues or actions that require FWS approval, and others that are at the discretion of the DNR and about which the FWS will be informed and given the opportunity to comment on, but for which FWS approval is not necessary. Dave emphasized that this change would be applied conservatively at first to see how it works.

ACTION: Dave will discuss Plum Creek's experiences with FWS in Montana with Lorin to help identify categories of issues that apply.

Cathy and Janet requested that the FWS comment period be extended to twenty days.

- Dave received information from Lorin and sent it to Cathy in advance of the meeting.
- Cathy handed out a draft guideline titled, "Clarifications vs. Minor Amendments". Draft looks good. Change "Suggested Coordination Procedure" to read (suggested changes from meeting):

WDNR review w/IOC if appropriate, then proposes clarification to FWS in writing w/ description of clarification, reason for, and justification of clarification, and effect on the HCP conservation program. FWS responds wi/

60 days (or sooner if possible) with a written approval or disapproval of the proposed clarification, or identification of need to process a minor or major amendment. ***Note:** If FWS has not received all the information necessary for review of the clarification within the 60 day time frame DNR/FWS will negotiate additional time.*

FWS and DNR also identified the need to revise the language in the HCP pertaining to Minor and Major amendments (HCP, pp. 173-175). Currently the Minor Amendments procedure (p. 174) calls for amending the HCP if there are changes in, among other things, 1) the total acres that have been committed to the conservation program, 2) land ownership, and 3) survey and monitoring protocols” We are not currently processing minor amendments for these actions. Under “Major Amendment” (p. 173) we are to amend the ITP and HCP if there is a substantive reduction in the total acres committed to the HCP, ...” We should probably come with a trigger point for identifying when this occurs.

- **ACTIONS: FWS/DNR** - Begin to apply the “Suggested Coordination Procedure” for Clarifications noted above. Review how this is working at next HCP 6-month Review meeting, April 2004. Cathy will draft proposed language change for minor vs. major amendments for review at April 2004 meeting.

3.2 Monitoring System Improvements

Cathy asked: Effective monitoring issues - changes still being considered? YES.

- Meeting of new monitoring team is scheduled for December 10th in conjunction with the IOC meeting in Stevens Point.
- Gary Birch, Paul Rasmussen and Dave will develop the agenda and meeting process next week. Agenda will be released soon after.

Not addressed: [Cathy and Dave will discuss prior to December 10th Monitoring Team meeting.]

- Did not review IOC's objectives for HCP monitoring; nor were ESA requirements discussed and added.
- Did not discuss critical timeline for monitoring change approvals.

3.3 Streamlining requests for CIs for full partner applicants

- Reviewed FWS draft Sept. 8, 2003 letter outlining the information that should be requested of the new partner and sent to the Service with the request for a CI.
- When will we invite corridor managers and railroads to join the HCP? How will we know when we will be prepared to handle more full partner applications?
Not until we have a standard process/SHCA template/conservation measures.
Cathy: Not a high priority to invite new full partners with all the other things we are doing.
- Regarding an electric cooperative with a Rural Utilities Service (RUS) loan – any incidental take of KBBs could be handled via a separate Section 7 consultation between the RUS and the Service, or alternatively, the electric cooperative could apply for inclusion in the WI Statewide HCP for the KBB, and be issued a

Certification of Inclusion and then be covered by the Section 7 done for the HCP (which would be reference). The choice is theirs.

- For current partner company transfers, Jimmy recommends handling with an amendment to the SHCA, not a new SHCA. And identify SHCA changes and land included changes. For lands included changes (transfers) it will be easier to use.

ACTION: Cathy will finalize the FWS draft Sept 8 letter and send to WDNR.

3.4 Streamlining of FWS Review of Limited Partners' CIs

Review strategy to streamline FWS issuance of CI.

FWS would like to get to the point where they can just send out the CI with a very brief cover letter that references the SHCA and DNR's cover letter to the partner re: the SHCA. To do that, FWS suggests that DNR's correspondence with the applicant should include all the information FWS puts in their cover letter to the applicant (if it's not already in the revised SHCA) and the Appendices (some of which were revised early September).

- In appendix B. protocols 4 & 5 include an "application" block that says what activities are included under these protocols, and what activities and species taking the DO NOT pertain to. (The concern is that the protocols would be wrongly believed to apply where species other than KBB occur.)
- Use language in September 22, 2003, "Tom Walther" letter for approvals and mitigation.
- Dave shared new Limited Partner SHCA template and Appendices (TOC). Looks good but needs more work.
 - SHCA: In Section 7. Annual Report requirements, add "mitigation plan/report for any ROW construction or ditch maintenance involving take of KBBs (refer to Appendix "X" Mitigation Requirements)" once these activities are pre-approved under Appendix B.4 and B.5.
 - Add an "acres included" section on appendix A cover sheet. Include calculation formula.
 - Define activities and understand their impacts on KBB/habitat that fall under and do not fall under B.4 "Shoulder Maintenance and Grooming, and Ditch Repair and Maintenance" and B.5 "Major Road Construction, Road Rerouting and Straightening". Dave thinks based on information from the field, that shoulder maintenance and grooming would not be expected to impact KBBs. Should work up avoidance criteria for "shoulder maintenance and grooming".
 - Develop protocols for B.4 and B.5.
 - Get input from partners, approval from IOC, and confer with the Service.
 - Keep B.4 and B.5 on pre-approvals until protocols are developed, applicable partners are oriented and understand the protocol. When the Service and DNR are comfortable these activities can be done without pre-approval.
 - When completed, under cover letter to the FWS, DNR will request a minor amendment to approve the SHCA and submitted protocols.

ACTION: FWS and DNR will continue to coordinate on revisions to the Ltd. Partner SHCA and Appendices.

ACTION: e.g. (among others) develop avoidance criteria for "shoulder grooming.

3.5 Outreach & Education. Expanded KBB HCP webpage at DNR.

<http://www.dnr.state.wi.us/org/land/er/invertebrates/karner.htm>

Cathy said she has been on the site.

3.6 Changed/unforeseen circumstances revisions- progress report?

Dave presented two minor amendments and a new report form to be included in the Annual Report: One to delete Gypsy Moth Control from list of changed circumstances. This was agreed on at the April 2003 meeting. The second is to change the reporting period for "Forest fires and other wildfires of anticipated degrees and fire suppression activities related to them, and for "Natural weather events...." from 30 days to "at time of annual report". Cathy was concerned that land within SPAs should be reported in 90 days. Since there is nothing different that the partner or Service would do if a changed circumstance happened inside or outside a SPA anytime sooner, Cathy agreed to reporting all CC/UCs "as soon as possible and no later than at time of annual report". Discussed fact that in wildfire areas or areas experiencing a blow down, salvage logging would likely occur, and previously occupied sites would be treated as occupied per HCP protocols. Also discussed how and when impacts to KBB would be assessed.

ACTION: Dave and Bob Hess will supply letter to FWS including both changes in a single minor amendment; in letter, include further justification with supporting evidence. Attach IOC minutes which document IOC approval of the minor amendment. Cathy, provide comments on Draft Report Form.

For 30 day to Annual Report change, include caveat that no additional impact i.e. no additional fire or no planting over original known KBB site until CC/UC impact assessment is done. Exception is salvage logging since this doesn't result in additional compounded impacts. For salvage logging, just follow applicable HCP conservation measures as though it were a scheduled timber harvest.

NEW BUSINESS

4. Other Amendments and Clarifications.

One time applicant vs. full partner clarification that was agreed to at April 2003 meeting has not been published yet.

ACTION: DNR to submit clarification language in writing to the Service to formally request the concurrence.

5. Preliminary report on how audits are going this year.

Dave reported that most partners have continually improved. Most are doing excellent. One partner was found in non-compliance. This will be detailed in the audit summary report.

6. Pesticide Guidelines clarification

Cathy wrote: "The pesticide guidelines allow spot application of pesticides during the KBB flight season, with precautions. Crex Meadows is wick-applying pesticides during the KBB flight season. Wick application was not addressed during formulation of the pesticides guidelines (or if it was, the FWS was not aware of it). There's need to clarify that wick application can be considered spot application - and to incorporate measures to minimize harm to KBBs when using this application method - consider incorporating the minimization measures being used at Necedah NWR into the pesticide guidelines.

Also discuss "Conservation Measures Pertaining to Mechanical Management..." handed out by Cathy. Dave reported that Pete Engman reviewed the "wicking" guideline and said it is okay, except the 5 mph restriction is irrelevant and unenforceable. Bob reiterated this point, a 5 mph speed limit is not necessary, as this equipment does not travel that fast when working. It was agreed that the speed restriction could be removed since heavy equipment brush removal by the nature of the terrain and the equipment is limited to less than 5 mph, and this just causes confusion. If a protocol is necessary, it will be stronger to have some language explaining the objectives, e.g. "of slower speeds, i.e. to take caution to avoid splattering excess chemicals on the lupine (lower, non-target vegetation)".

Cathy suggested having a protocol for each type of equipment.

Bob suggested that the hydroaxing protocol should not be restricted to one type of equipment. Mechanical management should be generally categorized as non-aerial heavy equipment mechanical management for slash reduction; including all applicable equipment such as hydroaxes, flail cutters, et al. Suggestion was made to change name of protocol to "Brush and slash reduction using heavy equipment."

ACTIONS: Bob will review the "Conservation Measures Pertaining to Mechanical Management" handout and provide further comments for additions/revisions. Gary to work on language re: 1 a. use of hydro-axe and how operators will be trained to identify KBBs, lupine, and dominant nectar plants. Comments should go to Dave and Cathy for review, and be incorporated into Ltd. Partner SHCA appendix as appropriate.

7. DOW chemical (Intrepid) issue with cranberry growers.

They (cranberry growers) have worked well with DATCP thus far, but now EPA has brought up DOW issue and cranberry growers are angry. The cranberry growers are blaming the HCP, saying it has failed to do what we said it would (for the cranberry growers). The HCP is getting a "black eye". The FWS may need to increase efforts to resolve this issue with EPA. Then assure the cranberry growers that the HCP/partners are not to blame.

The debate is between the growers and EPA, and perhaps DATCP, not the HCP, DNR or FWS. The HCP was designed to provide incentives for KBB conservation while covering land managers and owners under the ESA. The agriculture industry received that coverage. The ESA is not the issue, pesticide use is the issue and that is regulated by EPA not the DNR or FWS. (JSC)

8. The credibility of the HCP and the FWS is getting a "black eye".

Sharing information for awareness and Discussion

Discuss "back door" issue whereas third party brings to light "illegal take" by roadway managers and lack of enforcement by FWS.

There was a general discussion and recognition that this listing and implementation of it was not intended to be enforcement oriented, but partnership oriented. Enforcement, with the number of law enforcement officers available, is always a matter of priority and the facts sufficient to make this KBB enforcement a priority haven't arisen yet. (JSC)

- Sluggish inclusion process and delayed invitation to corridor and railroad managers is getting a, "why should I bother" response.
- Town of Rome mowing is another example brought to our attention by a public.

Next HCP 6-month review meeting: April 14, 2004 in Madison

6-mo mtg minutes 11-06-03 final.doc